

ESTATE OF NORA B. KENNEDY, DECEASED, AND
MRS. ANN R. NORTON

JUNE 19, 1951.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. GOODWIN, from the Committee on the Judiciary, submitted the
following

REPORT

[To accompany H. R. 3430]

The Committee on the Judiciary, to whom was referred the bill (H. R. 3430) for the relief of the estate of Nora B. Kennedy, deceased, and Mrs. Ann R. Norton, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 6, after the word "of" strike out everything up to the colon on page 2, line 1, and insert in lieu thereof the following:

\$5,000, and to pay Mrs. Ann R. Norton the sum of \$1,500. The payment of such sums shall be in full settlement of all claims against the United States for the death of Nora B. Kennedy, deceased, and for personal injuries and expenses incident thereto sustained by Mrs. Ann R. Norton which occurred as a result of an accident during which they were struck by a United States Army vehicle on December 31, 1944, while they were crossing D Street near the intersection of Third Street in South Boston, Massachusetts

Amend title so as to read:

A bill for the relief of the estate of Nora B. Kennedy, deceased, and Mrs. Ann R. Norton.

The purpose of the proposed legislation is to pay the sum of \$5,000 to the estate of Nora B. Kennedy, late of South Boston, Mass., and to pay the sum of \$1,500 to Mrs. Ann R. Norton also of South Boston. The payment of such sums shall be in full settlement of all claims of the estate of Nora B. Kennedy, deceased, and for personal injuries and expenses incident thereto sustained by Mrs. Ann R. Norton which occurred as a result of an accident during which they were struck by a United States Army vehicle on December 31, 1944, while they were crossing D Street near the intersection of Third Street in South Boston, Mass.

STATEMENT OF FACTS

It appears that on December 31, 1944, at about 6:55 a. m., Mrs. Nora B. Kennedy, age 63, and her sister, Mrs. Ann R. Norton, age 68, were crossing D Street near the intersection of that street with West Third Street in South Boston, Mass. Before crossing the street they observed an Army vehicle approaching them when it was about 125 feet away. Thinking that they had sufficient time to get across the street, they proceeded to walk across it. The street was icy. When the vehicle was about 80 feet from the ladies, the driver, William Sazinsky, a civilian employee of the Army, saw them and applied his brakes in an attempt to avoid striking them. He did not use his horn. The ladies were struck and knocked to the ground by the left side of the Army vehicle.

Mr. Sazinsky was prosecuted on January 31, 1945, by the Commonwealth of Massachusetts on the charge of "driving so as to endanger," and he was found guilty of such charge. On appeal to a higher court he was found not guilty and the case was closed.

After the accident Mrs. Kennedy was lying in front of the left front wheel of the Army vehicle. She was removed by a police ambulance to the Carney Hospital, South Boston, where she was treated by Dr. Arthur I. Parvey and Dr. John L. Doherty, 270 Commonwealth Avenue, Boston, for multiple fractures of the pelvis, contusions and abrasions of the face and head, and auricular fibrillation. She remained in the hospital, where on January 4, 1945, she developed pulmonary edema and died at about 8:15 p. m. on that date.

After the accident Mrs. Norton was taken to her residence at 278 D Street, South Boston, and was treated by Dr. Dominic Pilka for contusions and abrasions of the left side of her head, left elbow, and both hips. On April 19, 1945, Mrs. Norton was examined by an Army medical officer in the presence of Dr. Pilka. As a result of such examination, X-rays were taken on April 20, 1945, which revealed that she had sustained fractures of the fourth, fifth, and sixth ribs on the right side. The Army medical officer's diagnosis was given as "1. Healed fracture of fourth, fifth, and sixth ribs on right side. 2. Arthritis of the spine. 3. Organic heart disease with auricular fibrillation and beginning heart failure." His prognosis of the case stated, "In a woman of this age with heart disease and arthritic changes no predication as to disability can be made."

The Department of the Army, in its report dated June 1, 1951, states:

The evidence in this case establishes that the accident and the resulting death of Mrs. Kennedy and personal injuries sustained by Mrs. Norton were not caused by any fault or negligence on their part but were caused solely by the negligence of the Army driver in driving the Army vehicle in a careless manner at an excessive rate of speed on the icy streets. The Department of the Army, therefore, believes that the claimants should be compensated in a reasonable amount for the damages which they sustained as a result of this accident.

It is believed that the proposed award of \$10,000 which would be paid to the estate of Mrs. Nora B. Kennedy by H. R. 3430 is somewhat excessive. The Department, however would have no objection to the enactment of this bill if it were amended so as to provide for an award to the estate in the amount of \$5,000. An award in this amount, in the opinion of the Department, would be fair and reasonable under the attendant circumstances, and it would appear to be in line with awards made in the State of Massachusetts in similar cases.

The proposed award in H. R. 3431 to Mrs. Ann R. Norton in the amount of \$2,500 appears to be excessive in view of recent medical evidence which shows

that her present physical disability is consistent with her advanced age and that the accident did not directly produce any permanent disability. However, the evidence does show that Mrs. Norton was injured in the accident and did suffer pain and suffering as a result of the accident. Accordingly, the Department would have no objection to the enactment of this bill for her relief if it should be amended to provide for an award to the claimant in the amount of \$1,500, which sum would appear to be fair and reasonable in view of the nature of the injury, the lack of permanent disability resulting from the accident and the fact that medical expenses and property damage have already been paid.

Therefore your committee concurs in the recommendation of the Department of the Army, amends the bill accordingly, and recommends favorable consideration to the amended bill.

DEPARTMENT OF THE ARMY,
Washington 25, D. C., June 1, 1951.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives.

DEAR MR. CELLER: The Department of the Army would have no objection to the enactment of the following bills, both of which arise out of the same accident, if they should be amended as hereinafter recommended.

H. R. 3430, Eighty-second Congress, a bill for the relief of the estate of Nora B. Kennedy, which would authorize and direct the Secretary of the Treasury "to pay, out of any money in the Treasury not otherwise appropriated, to the estate of Nora B. Kennedy, late of South Boston, Massachusetts, the sum of \$10,000. The payment of such sum shall be in full settlement of all claims of such estate against the United States arising out of the death of the said Nora B. Kennedy, which occurred as a result of her being struck by a United States Army vehicle on December 31, 1944, while she was crossing D Street near the intersection of Third Street in South Boston".

H. R. 3431, Eighty-second Congress, a bill for the relief of Mrs. Ann R. Norton, which would authorize and direct the Secretary of the Treasury "to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Ann R. Norton (sometimes known as Anna R. Norton), South Boston, Massachusetts, the sum of \$2,500. The payment of such sum shall be in full settlement of all claims of the said Mrs. Ann R. Norton against the United States arising out of personal injuries sustained by her on December 31, 1944, when she was struck while crossing D Street near the intersection of Third Street in South Boston by a United States Army vehicle".

The records of the Department of the Army show that on December 31, 1944, at about 6:55 a. m., Mrs. Nora B. Kennedy, age 63, and her sister, Mrs. Ann R. Norton, age 68, were crossing D Street near the intersection of that street with West Third Street in South Boston, Mass. Before crossing the street they observed an Army vehicle approaching them when it was about 125 feet away. Thinking that they had sufficient time to get across the street, they proceeded to walk across it. The street was icy. When the vehicle was about 80 feet from the ladies, the driver, William Sazinsky, a civilian employee of the Army, saw them and applied his brakes in an attempt to avoid striking them. He did not use his horn. The ladies were struck and knocked to the ground by the left side of the Army vehicle.

Mr. Sazinsky was prosecuted on January 31, 1945, by the Commonwealth of Massachusetts on the charge of "driving so as to endanger," and he was found guilty of such charge. On appeal to a higher court he was found not guilty and the case was closed.

After the accident Mrs. Kennedy was lying in front of the left front wheel of the Army vehicle. She was removed by a police ambulance to the Carney Hospital, South Boston, where she was treated by Dr. Arthur I. Parvey and Dr. John L. Doherty, 270 Commonwealth Avenue, Boston, for multiple fractures of the pelvis, contusions and abrasions of the face and head, and auricular fibrillation. She remained in the hospital, where on January 4, 1945, she developed pulmonary edema and died at about 8:15 p. m. on that date.

After the accident Mrs. Norton was taken to her residence at 278 D Street, South Boston, and was treated by Dr. Dominic Pilka for contusions and abrasions of the left side of her head, left elbow, and both hips. On April 19, 1945, Mrs. Norton was examined by an Army medical officer in the presence of Dr. Pilka.

As a result of such examination, X-rays were taken on April 20, 1945, which revealed that she had sustained fractures of the fourth, fifth, and sixth ribs on the right side. The Army medical officer's diagnosis was given as "1. Healed fracture of fourth, fifth, and sixth ribs on right side. 2. Arthritis of the spine. 3. Organic heart disease with auricular fibrillation and beginning heart failure." His prognosis of the case stated, "In a woman of this age with heart disease and arthritic changes no predication as to disability can be made." From the history and physical examination it seems probable that the ribs were fractures in the accident of December 31, 1944. However, from the examination, I cannot determine the effect of the accident on the heart disease, and the arthritic changes." Dr. Pilka, in his report, stated that "No permanent disability unless later complications set in. Estimated temporary disability for about 1 month due to her advanced age."

On April 19, 1951, Mrs. Norton was examined in the Army dispensary, Boston Army base, Massachusetts. A summary of her physical examination is as follows:

"Summary of physical examination: This is a case of a 75-year-old female who was allegedly struck by an Army staff car, who claims that as a result of the accident she suffered the following injuries:

"(1) Abrasions of left orbit.

"(2) Abrasions of left side of neck.

"(3) Abrasions of left arm, thigh, knee, and leg.

"(4) Fractures of left ribs (number of ribs not known).

"(5) Loss of hearing on left.

"(6) Damage to left eye, resulting in diminution of vision in left eye.

"(7) Heart disease, noted for first time on first day of accident, requiring digitalis.

"* * * The X-ray examination revealed (1) marked myocardial disease, with decompensation; (2) marked deformity of entire spine and hypertrophic arthritis, expected to be seen at age 75; (3) no evidence of any previous rib fractures. The eye examination revealed an old chorioretinitis of left eye.

"Opinion: (1) As to whether the cardiac disease existed prior to the accident in 1944, it is the opinion of this examiner that the accident did not directly produce this condition. This disease is of many years' duration, and whether the accident happened or not, the progress of the disease probably would have reached its present state.

"(2) With no X-rays viewed taken in 1944, it is difficult to state that rib fractures were present, in view of present X-rays in which no evidence of previous fracture is noted.

"(3) The old chorioretinitis, as described by the ophthalmologist, could be traumatic, but the present status of her vision is consistent with her advanced age.

"(4) There is no evidence of trauma to the left ear. The diminution of auditory acuity is consistent with her advancing years."

On May 9, 1945, Anna R. Kennedy, as administratrix of the estate of Nora B. Kennedy, deceased, filed a claim with the War Department (now the Department of the Army) in the amount of \$790.75 (the medical, hospital, and burial expenses incurred as the result of the injury and death of the decedent). On the same date Mrs. Ann R. Norton filed a claim in the amount of \$98.90 for the property damage and medical expenses incurred by her as the result of said accident. These two claims were approved in the amounts claimed, on May 11, 1945, by an officer on the staff of the commanding general, Boston Port of Embarkation, Boston, Mass., acting under appropriate delegated authority under the provisions of the act of July 3, 1943 (57 Stat. 372; 31 U. S. C. 223b).

On May 17, 1945, a check (No. 3241092) in the amount of \$790.75 was transmitted to Anna R. Kennedy, as administratrix of the estate of Nora B. Kennedy, deceased, in payment of the claim filed by her. On the same date a check (No. 3241093) in the amount of \$98.90 was transmitted to Ann R. Norton, in payment of the claim filed by her.

The afore-mentioned act of July 3, 1943, under which these claims were approved, provides only for the payment of medical, hospital, and burial expenses in cases arising out of personal injury and death. There is no statute under which any amount may be paid by the Department of the Army to Ann R. Norton on account of the personal injuries sustained by her in the accident of December 31, 1944, or to the estate of Nora B. Kennedy on account of her injury in and death as the result of said accident. These claimants have no remedy under the Federal Tort Claims Act, as revised, codified, and amended, for the reason that said statute applies only to cases which arose on or after January 1, 1945.

The evidence in this case establishes that the accident and the resulting death of Mrs. Kennedy and personal injuries sustained by Mrs. Norton were not caused by any fault or negligence on their part but were caused solely by the negligence of the Army driver in driving the Army vehicle in a careless manner at an excessive rate of speed on the icy streets. The Department of the Army, therefore, believes that the claimants should be compensated in a reasonable amount for the damages which they sustained as a result of this accident.

It is believed that the proposed award of \$10,000 which would be paid to the estate of Mrs. Nora B. Kennedy by H. R. 3430 is somewhat excessive. The Department, however, would have no objection to the enactment of this bill if it were amended so as to provide for an award to the estate in the amount of \$5,000. An award in this amount, in the opinion of the Department, would be fair and reasonable under the attendant circumstances, and it would appear to be in line with awards made in the State of Massachusetts in similar cases.

The proposed award in H. R. 3431 to Mrs. Ann R. Norton in the amount of \$2,500 appears to be excessive in view of recent medical evidence which shows that her present physical disability is consistent with her advanced age and that the accident did not directly produce any permanent disability. However, the evidence does show that Mrs. Norton was injured in the accident and did suffer pain and suffering as a result of the accident. Accordingly, the Department would have no objection to the enactment of this bill for her relief if it should be amended to provide for an award to the claimant in the amount of \$1,500, which sum would appear to be fair and reasonable in view of the nature of the injury, the lack of permanent disability resulting from the accident and the fact that medical expenses and property damage have already been paid.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,
Secretary of the Army.

AFFIDAVIT OF JAMES W. McALLISTER

52 MAPLE STREET, HYDE PARK, MASS.

I hereby certify that on December 31, 1944, I was a police sergeant attached to division 6, Boston Police Department on D Street, South Boston. About 6:55 a. m. on that morning a United States Army sedan (Army registration US 7320, Boston Port of Embarkation No. 20) operated by William Sazinsky, 31 Marlboro Street, Chelsea, Mass., struck Nora Kennedy, 274 D Street, South Boston, and Ann Norton, 278 D Street, South Boston, while they were crossing D Street at a point near Third Street.

I was leaving the station house when Mr. Sazinsky came running into the doorway and said "I have just hit two women." I went out onto the street and found Mrs. Norton lying about 3 feet in front of the car. Mrs. Kennedy lay under the car. With the assistance of others I lifted the car from Mrs. Kennedy, and had her taken to the Carney Hospital. We carried Mrs. Norton into her home.

Mr. Sazinsky said "I didn't notice them until I got so close to them I couldn't stop." He further said he jammed on his brakes and skidded. I measured skid marks which to my best recollection were over 20 feet in length. The street was icy. I believe the street to be approximately 40 feet wide at this point. It was well lighted by an arc light at the corner.

JAMES W. McALLISTER.

COMMONWEALTH OF MASSACHUSETTS,

Suffolk ss:

Subscribed and sworn to this 19th day of December 1950 at Boston, before me.

[SEAL]

THOMAS E. LEEN, Notary Public.

CARNEY HOSPITAL,
South Boston, Mass., July 31, 1945.

ABSTRACT OF RECORD

Mrs. Nora Kennedy, 274 D. Street, South Boston, Mass. Age 63.

Admitted: December 31, 1944.

Diagnosis: Multiple fractures of the pelvis (auricular fibrillation).

C. C. "Pain and inability to move legs without severe pain, pain in inguinal region."

P. I. Patient was struck by truck, knocked down, and is not too clear about the following events. She was unable to stand and was brought into hospital.

P. H. She states that she has, in her opinion, experienced excellent health, and has had no serious medical illness nor operation. She is vague about early childhood diseases. She states that she has been "troubled with gas" for several years, for which she has been treated by her doctor.

Physical examination:

Facies: In considerable pain.

Head: Contusions, right temporal region, right cheek. Old healed scar right cheek and mouth.

E. E. N. and throat: Essentially negative.

Neck: Trachea in midline, no masses, no tenderness.

Breast: Soft, no masses.

Lungs: Clear to P. and A.

Abdomen: Obese, no spasm, moderate tenderness in lower quadrant. Pain and tenderness in lumbar region of back, particularly on right.

Extremities: Contusions right forearm and back of left hand. Pain and tenderness in left hip region, no obvious deformity. This patient entered the hospital with auricular fibrillation.

X-ray January 2, 1945. Pelvis, left upper leg and lumbar spine: Films show multiple fractures in the pelvis, one through the right acetabulum and another through the ramus of the right pubis, a comminuted fracture through the ramus of the right ischium and another high up in the ramus of the left pubic bone and another through the middle of the ramus of the left ischium with distortion of the whole pubic and ischial structure to the left and opening of the left sacro-iliac joint.

Admission note December 31, 1944: This 63-year-old female was admitted via the accident room after being hit by a truck. The patient complains of severe pain in the pubic and left inguinal region. She also is unable to be moved or to move the legs without severe pain.

Physical examination: Shows an obese female lying flat in bed in obvious acute distress. Palpation elicits severe tenderness in the pubic and both inguinal regions. Moving is extremely painful. No shock is present. No apparent abdominal injuries. Bed rest and sedation is prescribed until X-rays can be taken later. She had auricular fibrillation on admission and was digitalized.

January 4, 1945: Patient developed pulmonary edema, became markedly distended, moribund, and died in spite of all treatment on this date. She was discharged deceased to the medical examiner's office (Suffolk County).

MAY 23, 1950.

This is to certify that the foregoing is a true abstract of the record of Mrs. Nora Kennedy, 274 D Street, South Boston, Mass.

CARNEY HOSPITAL,
SISTER OLIVA, Superintendent.

STATEMENT OF DOMINIC PILKA, M. D., SOUTH BOSTON, MASS.

Patient: Mrs. Anna Norton, 68 years of age, 278 D Street, South Boston, Mass.

Accident: December 31, 1944.

Consultation: December 31, 1944.

Complaint: Injury.

History: The patient states that she was going to church, about 6:50 a. m., and that she was struck and knocked down by Government truck. The local police came to her aid and brought her home. On arrival I found her already placed in bed and her daughter in attendance. She was in pain and was trembling with chills. Her mentality was clear.

Examination, head: The left side of the head contained superficial abrasions of skin with extracranial swelling and discoloration of the area, no signs of skull fracture. Chest: There was severe subjective pain in the area of sixth, seventh, and eighth rib curvatures, right side; it revealed no evidence of rib fracture; later this area showed deep blue discoloration. Left shoulder: It contained subjective pain, no marks or signs of injury, all motions were free and normal. Left elbow contained about 2-centimeter area of abrasion. Hips: Both hips were swollen and discolored, slightly more on left side, hip joints showed normal function, right thigh was dark blue and swollen. In general, the patient was

greatly excited and nervous. Pulse 140, respiration 24, temperature normal, blood pressure 138/100.

Diagnosis: Multiple contusions and abrasions. Contusion and abrasion of the left side of head. Contusion of the left shoulder. Contusion and abrasion of the left elbow. Contusion of both hips and of the right thigh.

Prognosis: At the time of injury the patient was expected to recover without complications but with prolonged rest and observation.

Comment: The convalescing period was rather prolonged, and if one would consider her age, her time of recovery was very short. She was considered discharged from treatment for this accident on March 31, 1945. During her illness, due to accident, she developed several complications: Stiffness of the neck, back-ache, numbness of the right lower extremity. There is also some headache and dizziness which she claims due to accident. Heart disturbance must not be forgotten. She still takes medication for her heart. Nervous excitement subsided with rest. The patient is considered as fully recovered, but she has not enough strength to go to church. She is still greatly fatigued due to accident and remains indoors.

DOMINIC PILKA, M. D.

COMMONWEALTH OF MASSACHUSETTS,

Suffolk, ss:

Subscribed and sworn to this 24th day of May 1950 before me.

[SEAL]

THOMAS E. LEEN.

AFFIDAVIT OF MARGARET LEE

I, Margaret Lee, 276 D Street, South Boston, Mass., certify that on December 31, 1944, at shortly before 7 a. m., I was leaving my home to go to church, living at that time in the same address as now. My daughter, Margaret T. Lee was with me. As I walked down the front stairs I observed Mrs. Nora Kennedy and Mrs. Ann Norton crossing the street from a point about 6 to 10 feet to the left of the stairs, and about three-quarters of the way across the street. I did not particularly observe the Army staff car coming along D Street toward the Army base in the semidarkness until I saw the car strike Mrs. Kennedy, throwing her first against Mrs. Norton, who was thrown to the ground. The car stopped with the front part of the car on top of Mrs. Kennedy. The driver ran into the police station across the street, and a policeman and two men (whom I believe were Mrs. Kennedy's son and a Mr. Hogan) pushed and lifted the car off her, a few minutes after the car struck her. My best recollection is that at the time I heard the driver say "It was dark, and I didn't see her."

MARGARET LEE.

Signed and sworn to at Boston, Mass., this 13th day of May 1950 before me.

[SEAL]

THOMAS E. LEEN.

AFFIDAVIT OF MARGARET T. LEE

I, Margaret T. Lee, 276 D Street, South Boston, certify that on the morning of December 31, 1944, just before 7 a. m., I was leaving the front door of my home at the above address with my mother, who was proceeding ahead of me. I heard a noise of a contact in the street and my mother screamed. I looked then into the street and saw Mrs. Ann Norton on the ground and Mrs. Nora Kennedy under the front part of an Army staff car. In a few minutes a police officer and two men lifted the car from Mrs. Kennedy, and she was placed in a police ambulance and driven away. The accident occurred across the center of the road from my home. My best recollection is that the way was slippery from ice.

MARGARET T. LEE.

Signed and sworn to at Boston, Mass., this 13th day of May 1950 before me.

[SEAL]

THOMAS E. LEEN, *Notary Public.*

